Supreme Court, U. S.
FILED
MAR 9 1978
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-747

WALTER J. FLECK, ET AL.,
Appellants,
v.
WARREN SPANNAUS, ET AL.,
Appellees.

On Appeal From The United States District Court For The District Of Minnesota

---

BRIEF *AMICUS CURIAE* OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA

PETER G. NASH
EUGENE B. GRANOF
DIXIE L. ATWATER
VEDDER, PRICE, KAUFMAN, KAMMHOLZ & DAY
1750 Pennsylvania Ave., N.W.
Washington, D.C. 20006

Counsel for the Chamber of Commerce of the United States of America, *amicus curiae*

Of Counsel:

STANLEY T. KALECZYC
National Chamber Litigation Center
1615 H Street, N.W.
Washington, D.C. 20062

WILSON · EPES PRINTING CO., INC. · RE 7-6002 · WASHINGTON, D.C. 20001

INDEX

	Page
INTEREST OF THE *AMICUS CURIAE*	1
SUMMARY OF ARGUMENT	4
ARGUMENT	5
The Minnesota Private Pension Benefits Protection Act Operated To Impair Contract Obligations In Violation of Article I, Section 10, Clause 1 Of The United States Constitution	5
A. The Relevant Legal Principles	5
B. Application of the Relevant Legal Principles to the Facts of the Instant Case	15
1. The Extent of the Impairment	15
2. The "Public Interest" Served	22
CONCLUSION	27

TABLE OF AUTHORITIES

Cases:	Page
Boys Markets v. *Retail Clerks Union*, 398 U.S. 235 (1970)	2
Cort v. *Ash*, 422 U.S. 66 (1975)	2
DeFunis v. *Odegaard*, 416 U.S. 312 (1974)	2
El Paso v. *Simmons*, 379 U.S. 497 (1965)	*Passim*
Fornaris v. *Ridge Tool Co.*, 423 F.2d 563 (1st Cir.) *rev'd per curiam on other grounds*, 400 U.S. 41 (1970)	11, 13, 18, 20
Gateway Coal Co. v. *United Mine Workers of America*, 414 U.S. 368 (1974)	2
Globe Liquor Co. v. *Four Roses Distillers Co.*, 281 A.2d 19 (Del. 1971), *cert. denied*, 404 U.S. 873 (1971)	18-19
Home Building & Loan Ass'n v. *Blaisdell*, 290 U.S. 398 (1934)	*Passim*
Louisville Joint Stock Land Bank v. *Radford*, 295 U.S. 555 (1935)	19
Railroad Retirement Board v. *Alton R. Co.*, 295 U.S. 330 (1935)	20
Standard Oil Co. of Louisiana v. *Porterie*, 12 F. Supp. 100 (E.D. La. 1935)	20
Superior Motors, Inc. v. *Winnebago Industries, Inc.*, 359 F. Supp. 773 (D.S.C. 1973)	16
United States Trust Co. v. *New Jersey*, 431 U.S. 1 (1977)	*Passim*
W. B. Worthen Co. v. *Kavanaugh*, 295 U.S. 56 (1935)	21
White Motor Corp. v. *Malone*, 545 F.2d 599 (1976)	24

Statutory and Constitutional Provisions:	
Minn. Stat. §§ 181B.1, *et seq.*	2
U.S. Constitution, Article I, Section 10, Clause 1	*Passim*

Other Authorities:	
Supreme Court Rule 42(2)	1

IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-747

WALTER J. FLECK, ET AL.,
Appellants,

v.

WARREN SPANNAUS, ET AL.,
Appellees.

On Appeal From The United States District Court For The District Of Minnesota

---

BRIEF *AMICUS CURIAE* OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA

INTEREST OF THE *AMICUS CURIAE*[1]

The Chamber of Commerce of the United States of America is a federation consisting of a member-

---

[1] This brief is filed with the written consent of the parties pursuant to Supreme Court Rule 42(2). Letters of consent are on file with the Clerk of this Court.

ship of over 3,700 state and local chambers of commerce and trade and professional associations, and a direct business membership in excess of 68,000. It is the largest association of business and professional organizations in the United States.

The Chamber regularly represents the interests of its member-employers in important matters vitally affecting those interests before the courts, the United States Congress, the Executive Branch and independent regulatory agencies of the federal government. Such representation constitutes a significant aspect of the Chamber's activities. Accordingly, the Chamber has sought to advance those interests in a wide spectrum of litigation.[1]

The specific question presented by this case is whether the United States District Court for the District of Minnesota, sitting as a three-judge court, erred in concluding that the Minnesota Private Pension Benefits Protection Act, Minn. Stat. §§ 181B.1 *et seq.* ("Minnesota Pension Act") does not impair contractual obligations in violation of Article I, Section 10 of the United States Constitution. The Minnesota Pension Act is directed against certain employers with existing pension plans who terminated such plans or ceased to operate a place of employment within the state. The Act imposes a pension funding charge on these employers, payable out of their assets, sufficient to fund the value of existing vested pension

[1] E.g., *Malone* v. *White Motor Corp.*, Case No. 76-1184; *Cort* v. *Ash*, 422 U.S. 66 (1975); *DeFunis* v. *Odegaard*, 416 U.S. 312 (1974); *Gateway Coal Co.* v. *United Mine Workers of America*, 414 U.S. 368 (1974); *Boys Markets* v. *Retail Clerks Union*, 398 U.S. 235 (1970).

benefits as well as the value of pension benefits for all employees with ten or more years of service. The charge is imposed notwithstanding the fact that the employer's plan did not provide vested benefits for employees with ten years of service and notwithstanding the actual funding provisions of the plan, including express limitations on employer liability.

The effect of the Minnesota Pension Act in this case is to alter retroactively the employment agreement between an employer and his employees by substantially expanding the employer's pension obligations beyond those he agreed to assume in contracts formed prior to the Act's passage. The Act has here operated to impose a heavy liability on an employer which he could reasonably neither anticipate nor avoid, and which cannot simply be passed off as a cost of doing business in the future, all because the pension arrangements which the employer previously entered into with his employees, which were perfectly lawful and proper, are now deemed by the state, acting with hindsight, to be inadequate.

The Chamber and its members are legitimately concerned that the decision of the district court sustaining the constitutionality of the Minnesota Pension Act establishes a dangerous precedent for future state legislation. For if Minnesota can seek to impose a solution of the sort represented by its Private Pension Benefits Protection Act on employers in response to a perceived problem relating to the economic well-being of a very small number and percentage of its citizens, other states can and almost certainly will do the same. To be sure, the perceived problems and solutions will vary. But throughout will run an un-

dercurrent that states, responding to political or other pressure, can conveniently negate existing private contractual provisions of long standing, with only a minimum of justification, and thereby expose employers to significant financial liability essentially retroactive in nature. The Chamber and its members have an obvious and strong interest in avoiding such consequences and, towards that end, in urging this Court to reverse the decision below. For that decision, if permitted to stand, will undermine the constitutional protection against those consequences by giving an unduly narrow reading to the Contract Clause of Article I, Section 10 which is neither legally warranted nor sound from a business or societal standpoint.

SUMMARY OF ARGUMENT

A state statute which impairs private contractual obligations, as does the Minnesota Pension Act, is unconstitutional under the Contract Clause of the United States Constitution (Article I, Section 10, clause 1) unless it reasonably serves an important public interest and the impairment is as minor as is practical to serve that public interest. The Minnesota Pension Act meets neither of these tests, for it severely and unreasonably impaired private employment and pension contracts, did so in furtherance of private and parochial interests, and constituted a radical impairment of contract that was not required to serve any important public interest.

In sum, the Minnesota Pension Act took money from the shareholders of a few businesses and distributed it to a selected few employees of those businesses even though the businesses had never agreed

to pay those moneys and even though the employees had no contractual right to receive those moneys.

To uphold the constitutionality of the Minnesota Pension Act could have an adverse effect upon employers nationwide, for it would allow states to mandate retroactive payment of employment benefits that employers have not anticipated or agreed to pay for work already performed. Indeed, if states may so cavalierly interfere with the employment relationship, they could presumably retroactively reduce wages or benefits below levels employers have agreed to pay in support of the greater public welfare. Such general disruptions of the employer-employee relationship constitute an unreasonable impairment of employment contracts and, at least to the extent of the application of the Minnesota Pension Act, should be declared unconstitutional.

ARGUMENT

The Minnesota Private Pension Benefits Protection Act Operated To Impair Contract Obligations In Violation Of Article I, Section 10, Clause 1 Of The United States Constitution

A. The Relevant Legal Principles

It is undisputed that the Minnesota Pension Act operated in this case to expand the pension obligations of appellant Allied Structural Steel Company, and thereby to impair Allied's contract obligations. The district court specifically found "that the Pension Act impaired Allied's employment agreement" (J.A. A-73), and pointed out that "the State of Minnesota seems to concede that there has been an impairment

of contract" (J.A. A-71). Nor did the state thereafter take issue with that point in the Motion to Dismiss or Affirm the lower court's decision which it filed with this Court.

Article I, Section 10, clause 1 of the United States Constitution (the "Contract Clause") provides that "No State shall . . . pass any . . . Law impairing the Obligation of Contracts . . . ." However, it is now well-settled that this prohibition is not absolute and that, in certain circumstances, state legislation which modifies contract obligations may be constitutionally sustained. *El Paso* v. *Simmons*, 379 U.S. 497 (1965) (hereinafter "*El Paso*"); *Home Building & Loan Ass'n* v. *Blaisdell*, 290 U.S. 398 (1934) (hereinafter "*Blaisdell*"). Indeed, to conclude otherwise would mean that legitimate state regulations could be avoided by parties merely entering into private contracts. However, the Contract Clause is by no means a nullity and any state statute impairing private contracts must meet certain review standards. Thus, as this Court recently stated in *United States Trust Co.* v. *New Jersey*, 431 U.S. 1, 22 (1977) (hereinafter "*United States Trust*"), as a minimum, any state law "intended to regulate existing contractual relationships must serve a legitimate public purpose," and also "must be upon reasonable conditions and of a character appropriate to the public purpose justifying its adoption." To be sure, courts must give due deference "to legislative judgment as to the necessity and reasonableness of a particular measure." *Id.* at 22-23.[3] Yet, because "the Contract Clause

[3] In the *United States Trust* case, this Court held that in assessing whether a subsequent modification of a state's own financial obligations is reasonable and necessary to serve an important public purpose, "complete deference to a legislative assessment of reasonableness and necessity is not appropriate because the State's self-interest is at stake." 431 U.S. at 25-26. It does not follow from this, however, that "complete" deference to a legislative assessment of reasonableness and necessity is appropriate when a state has impaired the obligation of a private contract. To conclude otherwise and merely defer to state legislatures would nullify the Contract Clause of the Constitution as it relates to private contracts.

limits otherwise legitimate exercises of state legislative authority," even "the existence of an important public interest is not always sufficient to overcome that limitation." *Id.* at 21.

In essence, then, this Court has stated that, in order to withstand constitutional scrutiny, a state statute impairing contracts must serve an important public interest, and the impairment of private contracts must be reasonable (i.e., as slight as is practical) and must be reasonably related to a fulfillment of the public interest sought to be served.

This principle becomes more apparent when reviewed in light of this Court's holdings in *Blaisdell*, *El Paso* and *United States Trust*. In *Blaisdell*, this Court upheld a state statute postponing mortgage foreclosure sales and extending mortgage redemption periods. Although the lender was unable to obtain possession of the land, or to obtain or convey title in fee, as he would have been able to do had the statute not been enacted, the statute did not impair the integrity of the mortgage indebtedness or the obligation for interest. 290 U.S. at 424-25. Moreover, while the borrower remained in possession, he was required to pay the rental value as that value had

been determined by judicial hearing. Hence, while the lender was debarred from actual possession—although only for a limited time under the terms of the statute—the Court found that, by virtue of the rent to which he was entitled, he received "the equivalent of possession during the extended period." 290 U.S. at 425. In short, notwithstanding the temporary postponement of the remedies available to the lender to obtain the security on his loan, it does not appear that the statute in question caused him to suffer any real substantive loss. Further, to the extent that any harm befell the lender, he was compensated for that loss by virtue of the statutorily mandated rental payments. In addition, the state statute in question was enacted during the depths of the 1930s Depression when economic stagnation and unemployment were resulting in the foreclosure sale of homes at far below the price that would have otherwise been reasonable. Thus, the temporary suspension of a procedural contractual obligation was supported by the public interest which the statute fully served—i.e., relief to homeowners caught in an economic depression. And, at the same time, the statute only slightly impaired substantive contractual rights and obligations.

In *El Paso*, this Court upheld a Texas statute which curtailed the previously unlimited right of a purchaser who had bought and then forfeited state land to reinstate his claim to such land by merely paying the state the accrued interest due. Although this represented a modification of the original sales contract because the right to reinstatement no longer continued into the indefinite future, the statute still permitted reinstatement within five years after forfeiture—a length of time which certainly seems adequate and reasonable by any objective standard. More important, with respect to any loss suffered by the purchaser, the Court simply refused to "believe that it can seriously be contended that the buyer was substantially induced to enter into these contracts [for the purchase of land from the state] on the basis of a defeasible right to reinstatement in case of his failure to perform, or that he interpreted the right to be of everlasting effect." 379 U.S. at 514. Further, the state statute was passed against a history of land sale abuses which the state had a legitimate right to correct and which the statute did in fact correct.

In *United States Trust*, this Court applied the same principles, and held invalid a New Jersey statute which repealed an earlier statutory covenant to Port Authority bondholders that had limited the ability of the Port Authority to subsidize rail passenger transportation from its revenues and reserves. The statutory covenant had been enacted to provide further security to Authority bondholders, and thus to ensure the bonds' marketability. 431 U.S. at 9-10. Faced with the developing energy crisis in 1974, however, the state retroactively repealed the covenant in order to implement the state's plan for encouraging a shift of automobile users to public transportation. *Id.* at 29.

Analyzing this retroactive repeal in the context of an allegation that the repeal violated the Contract Clause, this Court stated that "[a]s with laws impairing the obligation of private contracts, an impairment may be constitutional if it is reasonable and necessary to serve an important public purpose."

Id. at 25. While finding that the state's goals of mass transportation, energy conservation and environmental protection were "important and of legitimate public concern" (*id.* at 28), the Court concluded that the repeal "was neither necessary to achievement of the plan nor reasonable in light of the circumstances." *Id.* at 29.

Thus, applying the principles noted above, this Court found that New Jersey had not established the necessity of its action because less drastic measures could have been employed to accomplish the desired public purposes. *Id.* at 29-30. Further, this Court found that the repeal of the covenant was not a reasonable impairment of the contract between the state and the bondholders. Thus, even though the Court could not determine how much financial loss, if any, the bondholders suffered by the repeal (*id.* at 18-19), the Court concluded that the bondholders bought their bonds with the reasonable expectation that the state would not undercut the promised security embodied in the covenant. Even then, the repeal of the covenant might have been reasonable if circumstances had changed to the extent that the bondholders might have otherwise realized a windfall profit or a far more secure loan than they had originally anticipated, and the repeal of the covenant had thus merely returned them to the position they originally expected when they bought the bonds. *Id.* at 31-32. But the facts revealed no such changed circumstances, so that the repeal of the covenant simply eliminated the expected position of security. Accordingly, for the state to impair that security, even in furtherance of an important public purpose, was not reasonable and presented a situation far different from that involved

in the *El Paso* case where, in light of changed circumstances, the Texas statute was "a reasonable means to 'restrict a party to those gains reasonably to be expected from the contract' when it was adopted." *Id.* at 31, *quoting El Paso*, *supra*, 379 U.S. at 515.

Finally, in judging the reasonableness of a state statute's impairment of contractual obligations, it is relevant to analyze whether that statute imposes a retroactive or prospective alteration of the contract and, as in *Blaisdell*, whether the rights being altered are substantive or procedural in nature. Thus, as the First Circuit pointed out in a case which predated but is consistent with this Court's decision in *United States Trust*, "[a]ll courts recognize . . . that retrospective legislation, affecting established rights and relationships, presents an additional problem." *Fornaris* v. *Ridge Tool Co.*, 423 F.2d 563, 566 (1st Cir. 1970), *rev'd per curiam on other grounds*, 400 U.S. 41 (1970). For instance, "[w]hile the legislature may prevent an employee willing to contract to work for a low wage from doing so, West Coast Hotel Co. v. Parrish, 1937, 300 U.S. 379 . . ., the retrospective imposition of a minimum wage would be quite a different matter." *Id.* In short, "'[p]olice power' is not a magic word that permits the legislature to adjust any and every found economic ill without payment." *Id.* at 567. Rather,

> only minor infringement of established contractual rights may be effected without just compensation. . . .
>
> In determining whether retroactive alteration of contractual provisions are sufficiently

minor to be permissible a distinction is sometimes drawn between alteration of substantive rights and alteration of procedures or remedies. *See* Stockholders of Peoples Banking Co. of Smithsberg, Md. v. Sterling, 1937, 300 U.S. 175, 180-183, 57 S.Ct. 386, 81 L.Ed. 586 (alternative holding). However, even the latter may infringe constitutional rights, . . . W.B. Worthen Co. ex rel. Street Improv. Dist. v. Kavanaugh, 1935, 295 U.S. 56, 55 S.Ct. 555, 79 L.Ed. 1298, while the former can sometimes be tolerated if the effect is not too severe. El Paso v. Simmons, 1965, 379 U.S. 497, 503-508, 85 S.Ct. 577, 13 L.Ed.2d 446. Essentially, the question is, how drastically have property rights been affected, and, particularly, how great is the change viewed in the light of the reasonable expectations of the parties when the contract was entered into. *See* El Paso v. Simmons, *supra;* Home Bldg. & Loan Ass'n v. Blaisdell, 1934, 290 U.S. 398, 54 S.Ct. 231, 78 L.Ed. 413. The distinction is one of degree. For example, emergency statutes allowing a tenant to stay beyond the term of his lease upon payment of reasonable rent have been upheld as reasonable alterations, Block v. Hirsch, 1921, 256 U.S. 135, 41 S.Ct. 458, 65 L.Ed. 865, . . . whereas a statute which would have destroyed a mining company's reserved right to mine coal underneath land, the balance of which had been sold by it, has been invalidated as working a change of too great magnitude. Pennsylvania Coal Co. v. Mahon, 1922, 260 U.S. 393, 43 S.Ct. 158, 67 L.Ed. 322. (*Id.*)

Applying this analysis, the First Circuit invalidated [4] a statute which would have imposed substantial monetary liability upon a franchisor who terminated his franchising contract without "just cause," irrespective of the franchisor's right to terminate the relationship at will under the terms of his preexisting franchise agreement.

Thus, in summary, the courts have determined whether a state statute impairing contracts is violative of the Constitution by comparing the extent of contract impairment (including its retroactive or prospective effect, the extent of interference with legitimate expectations of contracting parties and whether the impairment is procedural or substantive) against the extent to which the state's action serves an important public interest and the extent to which that interest could be served by measures having a less drastic effect on contract obligations.

---

[4] Because *Fornaris* was concerned with an enactment of the legislature of Puerto Rico and because it was unclear in the circumstances whether Puerto Rico could be deemed a state for purposes of Article I, Section 10, the Court analyzed the case in terms of due process. Nonetheless, as the Court's opinion makes clear, its reasoning was based upon contract impairment cases and would have been precisely the same under Article I, Section 10 if the legislation under review had been that of a state rather than Puerto Rico. In any event, a state statute impairing the obligation of contract in a manner sufficiently harsh and oppressive to violate the Fourteenth Amendment's Due Process Clause would *a fortiori* be deemed to likewise violate Article I, Section 10, under this Court's prior decisions. *Fornaris, supra,* 423 F.2d at 566-67, *citing Thorpe* v. *Housing Authority,* 393 U.S. 268, 278-79 and *Lynch* v. *United States,* 292 U.S. 571, 579 (1934).

Indeed, the district court below paid lip service to the foregoing principles. It recognized that a major consideration "in determining the constitutionality of a particular [contract] impairment is the extent of that impairment" (J.A. A-70). And it agreed "that a factor to be considered in determining the extent of impairment is the legitimate expectations of the contracting parties." *Id.* It also acknowledged "that an impairment can be sustained only if reasonable and necessary to serve important purposes of the state" (J.A. A-71). As we show below, however, the court thereafter refused to apply the principles in any meaningful way. Had it done so, it could not have avoided finding on the undisputed record that the impairment here was substantial, for the Minnesota Pension Act retroactively interfered with major substantive contractual obligations and significantly frustrated the expectations of the parties. Further, proper analysis would have revealed to the district court that the Minnesota Pension Act was essentially special interest legislation for parochial interests which was neither necessary to serve important state purposes nor reasonably related to serving state interests.[8]

[8] The result below cannot simply be explained away on the basis of a differing appraisal of the evidence which this Court, although it might disagree, would be reluctant to disturb. Rather, the district court's treatment of the relevant principles serves seriously to distort those principles—so much so as to suggest that the Contract Clause limitation on state power is illusory. As was pointed out in *United States Trust, supra,* 431 U.S. at 16, even those "modern era" decisions sustaining state regulation against Article I, Section 10 contract impairment claims—i.e., *Blaisdell* and *El Paso*—carefully avoided such an extreme holding.

B. Application of the Relevant Legal Principles to the Facts of the Instant Case

A correct application of the above legal principles to the instant case requires a finding that the Minnesota Pension Act impermissibly impairs contractual obligations. We deal first with the extent of impairment and then the lack of reasonable relationships between the legislation creating that impairment and the public interest it seeks to serve.

1. *The Extent of the Impairment.* Here, the employer, Allied Structural Steel, established a pension plan in 1963 (J.A. A-39) which provided that

> a salaried employee is entitled to full vesting of his pension for early retirement purposes if: (1) he has worked fifteen continuous years and has attained the age of 60; or (2) after he has attained the age of 55 and has worked 20 continuous years, or a lesser number of continuous years of service, which when added to his age equals the sum of 75; or (3) before reaching age 55, he has at least 25 or more years of continuous service such that the sum of his age and continuous years of service equal 80. (J.A. A-40).

The plan, to which employees were not permitted to contribute, provided with respect to the employer's contributions:

> The employers shall make contributions in such amounts and at such times as an actuary shall determine, as shall be necessary to meet the benefits payable pursuant to the Plan. All contributions made by the employers to the Trust shall be irrevocable and shall be used to pay benefits

> under the Plan or to pay expenses of the Plan or Trust, to the extent not paid by the employers. (Appellant's Brief, App. 10a)

The plan further provided that the Company "may terminate the Plan at any time and may direct and require the trustee to liquidate the Trust." In such event, "the rights of all employees accrued to the date of such termination or discontinuance to the extent then funded shall be non-forfeitable and fully vested" (Appellant's Brief, App. 13a). Further, the accumulated assets of the pension trust fund would be applied, first, for the benefit of employees then receiving pensions; second, for the benefit of employees who are then eligible to retire; and, lastly, if any balance remained, for the benefit of all other employees covered under the plan (Appellant's Brief, App. 13a-14a). The plan recognized the possibility that the trust fund's assets might not be sufficient to meet the "equivalent actuarial value of each such employee's pension" in all three, or two, or even one, of the above groups and provided for "pro rata reduction" (Appellant's Brief, App. 13a-14a). The plan further explicitly specified:

> No employee shall have any right to, or interest in, any part of the Trust's assets upon termination of his employment or otherwise, except as provided from time to time under this Plan, and then only to the extent of the benefits payable to such employee out of the assets of the Trust. All payments of benefits as provided for in this Plan shall be made solely out of the assets of the Trust and neither the employer, the trustee, nor any member of the Committee shall be liable therefor in any manner. (Appellant's Brief, App. 17a)

In sum, the Allied pension plan was an agreement between Allied and its employees which set forth certain limited pension rights of employees and committed Allied to no payment or liability beyond contribution levels necessary to fund those limited benefits.

However, in 1974 the state of Minnesota enacted the Minnesota Pension Act which required any employer within that state who employed 100 or more employees, and who provided pension benefits, to fund vested pension benefits for its employees with ten years or more seniority if the employer terminated his business or pension plan.

When Allied began to terminate its Minnesota operation in 1974, "there were insufficient assets in the pension fund to pay the terminated employees after paying all employees who had vested rights under the plan" (J.A. A-68). As shown above, under the terms of the plan Allied would have had no further obligation to those employees. Yet, under the Minnesota Pension Act, Allied's contractual obligation under the plan was expanded to require it to purchase prepaid deferred annuities for all terminated employees with ten or more years of service at an additional cost ranging from $114,171.93 to $185,751.00. Thus, the impairment here was clearly substantive, for unlike the situation in *Blaisdell*, which merely deferred procedural rights, Allied is being required to pay sums it never agreed to pay to its employees.

This was a cost which Allied neither agreed to undertake nor could have reasonably anticipated being required to undertake when it established its plan

and during the period it continued to maintain that plan from 1963 to 1974. On the contrary, Allied was fully justified in believing it could rely on the terms of the plan to protect itself from such liability. For the plan itself not only expressly recognized the possibility of termination, but also expressly provided for distribution of the trust fund assets in that event, fully taking into account the possibility that those assets might be insufficient to provide "equivalent actuarial value" benefits for employees who had already retired, for those who were then eligible to retire, and then for all other employees. Moreover, although the plan obliged the employer to make "contributions in such amounts and at such times as an actuary shall determine," there was no requirement that the actuarial assumptions take into account the possibility of a plant closure, and, in fact, "the possibility of plant closure was not relied upon by the . . . actuaries in calculating plan contributions" (J.A. A-73; *accord*, J.A. A-68).

Nor could Allied's employees have had any reasonable expectation that their employment with Allied would produce pension benefits beyond those established by their pension plan. They might have "hoped" that they would ultimately receive a pension, but no state legislature may convert mere "hopes" into legitimate expectations, particularly where to do so would retroactively force one of the contracting parties (Allied) "into heavy contractual obligations that it never assumed." *Fornaris, supra*, 423 F.2d at 567. See also *Superior Motors, Inc.* v. *Winnebago Industries, Inc.*, 359 F. Supp. 773 (D.S.C. 1973); *Globe*

Liquor Co. v. *Four Roses Distillers Co.*, 281 A.2d 19 (Del. 1971), *cert. denied*, 404 U.S. 873 (1971).[*]

Indeed, by giving Allied's employees pension benefits which they would not have received under the terms of Allied's pension plan, the Minnesota Pension Act produced a windfall for those employees that they could not have anticipated. To sustain a statute providing such a windfall benefit at the expense of the employer would surely be incongruous in light of earlier Contract Clause cases decided by this Court permitting states to enact legislation which *eliminated* windfall benefits notwithstanding that such legislation impaired existing contracts. *United States Trust*, 431 U.S. at 31, n. 30.

Moreover, the costs which the Minnesota Pension Act imposed on Allied were retroactive costs—that is, they represented payments above and beyond what Allied agreed to pay its employees in exchange for work previously performed. As the district court observed, "[e]mployer contributions to pension funds must be recognized as a substitute for present compensation" (J.A. A-77). The Minnesota Act was enacted on April 10, 1974, and Allied began phasing out its Minnesota operation several months thereafter. Hence, the additional liability imposed on Allied as a result of the Act was almost entirely attributable to service performed by Allied employees

---

[*] *Cf. Louisville Joint Stock Land Bank* v. *Radford*, 295 U.S. 555 (1935) where, using a due process analysis, the Court invalidated a federal statute which, in effect, permitted a defaulting mortgager to redeem the property by paying the mortgagee at the appraised value of the land, which was less than half the face amount of the mortgage.

prior to the Act's effective date. For such past service, the Minnesota statute mandated for those employees with ten or more years of service whose pension benefits had not yet vested additional compensation in the form of pension benefits to which they were not entitled under the established pension plan. This, we submit, is virtually indistinguishable from "the retrospective imposition of a minimum wage" which the First Circuit in *Fornaris, supra,* pointed to as an obvious example of improper retrospective legislation.

Where a state statute has altered existing contractual arrangements to impose a substantial and unexpected retroactive financial burden upon one of the parties, as the Minnesota Pension Act does here upon Allied, courts have found such legislation violative of the Contract Clause. Thus, in *Standard Oil Co. of Louisiana* v. *Porterie*, 12 F. Supp. 100 (E.D. La. 1935), a three-judge court held that a state statute which required employers "to contribute large additional sums of money to the payment of pensions and annuities based upon services long since completed and fully paid for" violated not only the Contract Clause, but the Due Process Clause of the Fourteenth Amendment as well. 12 F. Supp. at 104.[7]

[7] In *Railroad Retirement Board* v. *Alton R. Co.*, 295 U.S. 330 (1935), this Court invalidated on Fifth Amendment due process grounds a federal statute establishing a compulsory retirement pension system which was held to place unjustified burdens on the carriers:

> The statute would take from the railroads' future earnings amounts to be paid for services fully compensated when rendered in accordance with contract, with no thought on the part of either employer or employee that further sums must be provided by the carrier. The provision is not only retroactive in that it resurrects for new burdens transactions long since past and closed; but as to some of the railroad companies it constitutes a naked appropriation of private property upon the basis of transactions with which the owners of the property were never connected. Thus the Act denies due process of law by taking the property of one and bestowing it upon another. This onerous financial burden cannot be justified upon the plea that it is in the interest of economy, or will promote efficiency or safety. (295 U.S. at 349-50).

Further, in *W. B. Worthen Co.* v. *Kavanaugh*, 295 U.S. 56 (1935), decided shortly after *Blaisdell*, this Court invalidated a state statute which altered the rights of creditors to such an extent that the creditors were effectively without a remedy for six and one-half years, during which period the creditors' right to receive principal and interest was suspended.

In sum, what the state of Minnesota has done with its retroactive imposition of massive new substantive requirements upon employment and pension contracts is to take between $114,000 and $185,000 from the shareholders of Allied and to give that money to selected ex-employees of Allied. And the state has not done this because Allied or its sharehoders acted improperly or otherwise caused harm which might justify a compensatory remedy. Indeed, the basic reason Allied's shareholders must bear this burden now is because their corporation was "foolhardy" enough to provide conditional pension coverage for employees in 1963.

Although it is fashionable today to view corporations like Allied as faceless entities with unlimited assets who can well afford the additional costs of providing pension or other benefits that a state like Minnesota may mandate, that view, even if true, can

be no basis for upholding the Minnesota Pension Act which so blatantly adds retroactive substantive contractual obligations. Indeed, most of this Court's Contract Clause cases have involved corporate parties. Further, of course, the popular view is not accurate, for all corporations are owned by the shareholders who have purchased their shares with the hope of dividends and appreciation, both of which are adversely affected by mandated retroactive costs created by statutes such as the Minnesota Pension Act. If those shareholders include retired workers who are relying upon dividends to finance their retirement, or pension trusts which rely upon dividends as a means of financing the retirement income of retirees, then the state of Minnesota may have effectively taken money from a retiree within its state and transferred it to another resident.

In short, it is difficult to imagine a more blatant infringement of contract than that embodied in the Minnesota Pension Act.

2. *The "Public Interest" Served.* In view of the substantial retroactive impact of the Minnesota Pension Act, and in view also of the decided cases dealing with the Contract Clause and with due process, it is difficult to conceive of any set of circumstances under which that Act could be constitutionally sustained on the basis of an important public interest. Plainly, such circumstances do not exist here.

Thus, unaided by any statements or findings of the Minnesota legislature, the district court set forth

what it assumed were the public purposes to be served by the Minnesota Pension Act.[8]

Thus, the court assumed that the Minnesota Pension Act was the result of a strong interest of the state in protecting the economic welfare of its senior citizens from forfeitures of anticipated retirement income (J.A. A-76). It further assumed that, in enacting this legislation, the state had a proper concern for the economic community in which retired persons lived and that the state could assist that economy by providing retirement income which would sustain the buying power of the residents and reduce demands for welfare assistance (*Id.*).[9] These assumptions, however, are not justified by the facts.

For, clearly, the state could not have been interested in the economic plight of retired persons in general

---

[8] The district court cites no statement or finding of the legislature to support what the court assumed to be the public purpose to be served by the Minnesota Pension Act, and the state seems to concede that no such statements or findings exist (Appellee's Motion to Dismiss or Affirm, 12-14).

[9] The court also concluded that an employer's offer of pension coverage takes the place of higher salaries. It is not clear what this has to do with any public purpose to be served by the Minnesota Pension Act, but it may be that the court was concerned that lower salaries had adverse effects upon the general economy of the worker's community, so that the state had a legitimate interest in enacting legislation to ensure that the money that was contributed to pensions would finally find its way back into the community in the form of pension benefits (J.A. A-77). Without taking issue with the court's unsupported conclusions, it appears that this public interest is the same as that discussed above—an interest in the economic well-being of the general community.

or the communities in which they lived, as the statute was directed at an exceedingly small portion of the state's population. Thus, to gain the benefit of the statute an employee would have to be employed by a Minnesota employer who employed 100 or more employees, who had voluntarily established a pension plan, and who terminated his plan or business between April 10, 1974 (the effective date of the Minnesota Pension Act (J.A. A-95 to A-97)) and January 1, 1975 (the effective date of ERISA and the terminal date of the Minnesota Pension Act (J.A. A-67, J.A. A-68)).[10] Further, the employee would have to have worked for ten years for his employer.[11] In addition, the legislature seemed to give

[10] Section 181B.17 of the Minnesota Pension Act provided that the latter "shall become null and void upon the institution of a mandatory plan of termination insurance guaranteeing the payment of a substantial portion of an employee's vested pension benefits pursuant to any law of the United States" (J.A. A-102). The court below certified to the Minnesota Supreme Court the question: "Upon what date did the Minnesota Private Pension Benefits Protection Act, Minn. Stat. § 181B.01 *et seq.* (1974) . . . become null and void pursuant to Minn. Stat. § 181B.17?" (J.A. A-66). Pursuant to that certification, "the Minnesota Supreme Court held that the [Minnesota] Pension Act continued in effect until January 1, 1975, when the provisions of ERISA [Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001, *et seq.*] preempted the state act and that this preemption preserved the pending causes of action. In other words, the terms of the [Minnesota] Pension Act were in force and applicable to the eleven employees terminated by Allied on July 31, 1974" (J.A. A-68).

[11] It appears also that the Minnesota Pension Act's coverage may be still further restricted by judicial decision to nonunion employers. Thus, in *White Motor Corp.* v. *Malone*, 545 F.2d 599 (1976), the Eighth Circuit held that the Minnesota Pension Act was preempted by the national labor policy embodied in the National Labor Relations Act, 29 U.S.C. § 151, *et seq.*, at least insofar as the Minnesota Pension Act applies to employers whose employees are represented by a union and who engage in collective bargaining. The Eighth Circuit's decision is now under review by this Court (No. 76-1184).

no consideration whatever to the retired shareholders of companies like Allied whose expectation of dividends needed for retirement may have been thwarted by the liability imposed by the Minnesota Pension Act (see *supra* p. 22).

If one is left to assume what the Minnesota legislature had in mind (as we must here because the legislature did not state its purpose), it is far more reasonable to assume that the legislature was enacting private legislation, tailored simply to provide pensions to a few residents of its state. That the Minnesota Pension Act is parochial special interest legislation can hardly be doubted considering that it was of such short duration, that it was limited to employers with 100 or more employees (J.A. A-90), that it was passed with full awareness of the forthcoming enactment of ERISA, and that it actually operated to cover relatively few employees.

Even if some public interest was to be served by the Minnesota Pension Act, it cannot withstand constitutional scrutiny under the Contract Clause. Its substantial interference with private contracts could be justified, if at all, by only the most compelling public interest, such as a broad based emergency situation. But no such emergency or other compelling public interest exists. There is no deep-rooted economic and social problem such as that created by

the Depression of the 1930s which justified the temporary emergency legislation sustained in *Blaisdell*. Nor do we have, as in *El Paso*, the Texas size "imbroglio" or "uncertainty of land titles, the massive litigation to which this gave rise, and the pattern of sale and forfeiture [which] were quite costly to the school fund and to the development of land use." 379 U.S. at 515-16. There are not present even the kind of broad and complex regional problems relating to "[m]ass transportation, energy conservation, and environmental protection" (431 U.S. at 28) advanced in support of the state legislation in *United States Trust*, but regarded by this Court as insufficient to justify the contract impairment reviewed in that case.

The Minnesota Pension Act was not enacted to deal with any problem of general state-wide importance affecting large numbers of Minnesota's citizens. It was not the result of extensive legislative investigation on matters of considerable scope and concern. Rather, as the district court found, "[i]t seems clear that the problem of plant closure and pension plan termination was brought to the attention of the Minnesota legislature when the Minneapolis-Moline Division of White Motor Corporation closed one of its Minnesota plants and attempted to terminate its pension plan" (J.A. A-79). And as that finding makes clear, the statute was enacted to assist a few private individuals, not in furtherance of any overwhelming and important public purpose.

In these circumstances, even "considerable deference to the policy judgments of the Minnesota legislature" (J.A. A-75) cannot suffice to sustain the conclusion reached by the court below "that the Minnesota legislature in enacting the Pension Act, was

addressing a problem of vital public interest" (J.A. A-78).

Further, even if the legislature had sought in the public interest to protect the retirement hopes of employees and the economy of a few local communities, and even if that public interest might be sufficient to justify some impairment of contract, it is clear that enactment of the Minnesota Pension Act constitutes a far more drastic impairment of private contracts than is reasonably necessary to serve those public interests. Thus, other actions by the legislature might have had the desired effect, such as a state law mandating prospective employer or taxpayer contributions to a fund to insure the benefits of employees who did not receive pensions despite ten years' employment. Alternatively, those relatively few employees who were the object of legislative concern could have been compensated out of the general state treasury. Significantly, even the district court conceded that "the legislature might have adopted a less drastic means to accomplish its purpose" than the provisions of the Minnesota Pension Act (J.A. A-79).

CONCLUSION

The Minnesota Pension Act has effected a substantial impairment of contract obligations; it was neither reasonable nor necessary to serve any vital public purposes; and alternate, less drastic means were available, in any event, to alleviate the perceived problem. Of course, it may have been politically more facile for the Minnesota legislature to simply rewrite the preexisting pension arrangements Allied and other employers had with their employees, and to

impose thereby a major retroactive liability on these corporations. But that is precisely what the Contract Clause in Article I, Section 10 was designed to prevent.

Accordingly, it is respectfully submitted that the Minnesota Private Pension Benefit Protection Act constitutes an unconstitutional impairment of private contracts and that this Court should reverse the judgment of the district court and direct it to enjoin enforcement of that Act.

Respectfully submitted,

PETER G. NASH
EUGENE B. GRANOF
DIXIE L. ATWATER
VEDDER, PRICE, KAUFMAN,
KAMMHOLZ & DAY
1750 Pennsylvania Ave., N.W.
Washington, D.C. 20006

Counsel for the
Chamber of Commerce of the
United States of America,
amicus curiae

Of Counsel:

STANLEY T. KALECZYC
National Chamber
Litigation Center
1615 H Street, N.W.
Washington, D.C. 20062